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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
	:	Case Nos. 00-B-41065 (SMB)
RANDALL'S ISLAND FAMILY GOLF	:	through 00-B-41196 (SMB)
CENTERS, INC., <u>et. al.</u> ,	:	
	:	(Jointly Administered)
Debtors.	:	
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**APPLICATION PURSUANT TO 11 U.S.C. § 107(b)(1) AND
BANKRUPTCY RULE 9018 FOR AN ORDER PROTECTING
THE CONFIDENTIALITY OF THE AMENDED AND
RESTATED RETENTION AGREEMENT WITH
KEEN REALTY CONSULTANTS, INC.**

**TO THE HONORABLE STUART M. BERNSTEIN,
CHIEF UNITED STATES BANKRUPTCY JUDGE:**

Randall's Island Family Golf Centers, Inc., et al. (the "Debtors"), as debtors and debtors-in-possession, as and for their application for an order pursuant to section 107(b)(1) of title 11 of the U.S. Code (the "Bankruptcy Code") and Bankruptcy Rule 9018, protecting the confidentiality of the amendments to the current retention agreement with Keen Realty Consultants, Inc. ("Keen"), in the form of an amended and restated retention agreement (the "Restated Agreement"), respectfully represent as follows:

Background

1. By application dated January 11, 2001, filed contemporaneously herewith, the Debtors seek an order, inter alia, authorizing them to enter into certain amendments to their current retention agreement (the “Current Agreement”) with Keen as their special real estate advisors by way of the Restated Agreement.

2. The Current Agreement was approved by Order of this Court dated June 28, 2000. The Current Agreement provides that Keen would market and sell certain non-core real property interests (the “Non-core Real Properties”). Keen has successfully sold most of Non-core Real Properties during these cases.

3. The Debtors have determined that the best method of maximizing the value of their assets for the benefit of their creditors is to expeditiously sell all of their assets over the next 60 days. It is in the best interest of the Debtors’ estates to expand the scope of Keen’s retention to assist the Debtors in disposing of all of their assets at an auction to be held in early February, 2001.

4. To this end, the Restated Agreement (a) expands the scope of the Current Agreement to include not only the Non-core Real Properties, but also each and every asset (the “Assets”) of the Debtors, and provides that Keen will represent the Debtors in the marketing and disposition of the Assets; (b) reduces and modifies the compensation terms of the Current Agreement; and (c) sets forth parameters for the implementation of a marketing program and auction in conjunction with the sale and disposition of the Assets.

Relief Requested

5. By this application, the Debtors seek to preserve the confidentiality of the Restated Agreement by filing a sealed copy for *in camera* review by this Court. As set forth in more detail

below, maintaining the confidentiality of the Restated Agreement is necessary to preserve the sanctity of the proposed auction and to maximize the value of the Debtors' estates.

6. Section 107(a) of the Bankruptcy Code codifies the public's general right to inspect and copy judicial records, including dockets and all related case filings. Section 107(b) provides:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may --

- (1) protect an entity with respect to a trade secret or confidential research, development, or *commercial information*

11 U.S.C. § 107(b)(1)(emphasis added).

Bankruptcy Rule 9018 further amplifies these exceptions, and provides, in relevant part, as follows:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information

Rule 9018, Federal Rules of Bankruptcy Procedure.

7. The leading case in the Second Circuit on confidentiality of court records is In re Orion Pictures Corp., 21 F.3d 24 (2d Cir. 1994). In Orion, the court stated:

Although the right of public access to court records is firmly entrenched and well supported policy and practical considerations, the right is not absolute. In limited circumstances, courts must deny access to judicial documents--generally *where open inspection may be used as a vehicle for improper purposes*. . . . In most cases, a judge must carefully and skeptically review sealing requests to insure that there really is an extraordinary circumstance or compelling need. *In the bankruptcy area, however, congress has established a special rule for trade secrets and confidential research, development and commercial information. Thus if the information fits any of the specified categories, the court is required to protect a requesting interested party and has no discretion to deny the application.*

Id. at 27 (emphasis added) (citations omitted).

8. In Orion, the court sealed a promotion/licensing agreement because “disclosing the sealed information, including the overall structure, terms and conditions of the [agreement] renders very likely a direct and adverse impairment of Orion’s ability to negotiate favorable promotion agreements.” Id. at 28.

9. Likewise, disclosure of the Restated Agreement here would impede the Debtors’ ability to maximize the value of the Assets. The Restated Agreement sets forth a list of entities (the “Prospective Purchasers”) with whom the Debtors have entered into negotiations for the disposition of individual Assets, parts of the Assets and/or all of the Assets. The Debtors have agreed with the Prospective Purchasers that, pending entry into agreements, their identities will remain confidential. Furthermore, in order to preserve the sanctity of and benefits of the auction process, the Debtors have guarded the identities of these parties. Disclosure of the Prospective Purchasers’ identities at this time could chill the auction process. Upon entry into any agreements with Prospective Purchasers, appropriate motions would be made to approve such transactions, subject to all applicable statutory provisions, rules and procedures.

10. Further, the Restated Agreement sets forth a modified and reduced compensation structure. For reasons which will also be further detailed to this Court *in camera*, public disclosure of the compensation structure would provide prospective purchasers unwarranted leverage in the sale process and could depress the amount of the Bids, thereby potentially reducing the recovery for the benefit of the Debtors’ creditors.

11. For the foregoing reasons, the Debtors submit that ample cause exists to grant the relief sought therein.

12. The Debtors have provided notice of this Application to (i) the Office of the United States Trustee; (ii) Berlack, Israels & Liberman, LLP, counsel to the Official Committee of Unsecured Creditors; and (iii) Morgan, Lewis and Bockius, LLP, counsel to The Chase Manhattan Bank, the Debtors' post-petition lender. Because of the nature of the relief requested, the Debtors respectfully submit that no further notice of the relief requested in this Application need be given.

13. No other application for the relief sought herein has been made to this or any other court.

WHEREFORE, it is respectfully requested that this application be granted, that the Court grant such other and further relief as is just and equitable.

Dated: New York, New York
January 19, 2001

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